No. 94-19

FILED
AUG 26 1994
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1994

LAURENCE G. WATERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

LEONARD E. BAILEY
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

BEST AVAILABLE COPY

11 pp

QUESTION PRESENTED

Whether petitioner's involuntary hospitalization constituted a commitment to a mental institution within the meaning of 18 U.S.C. 922(g)(4).

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	4
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Dickerson v. *New Banner Institute, Inc.*, 460 U.S. 103 (1983)	3
United States v. *Giardina*, 861 F.2d 1334 (5th Cir. 1988)	2, 5, 6
United States v. *Hansel*, 474 F.2d 1120 (8th Cir. 1973)	2, 4, 5

Constitution and statutes:

U.S. Const. Art. I, § 9, Cl. 3 (Ex Post Facto Clause)	3
Gun Control Act of 1968, 18 U.S.C. 922 *et seq.*	7
18 U.S.C. 922(g)(4)	2, 3, 4, 5, 6, 7
La. Rev. Stat. Ann. (West 1989):	
§ 28:53(A)(1)	5
§ 28:53(B)	5
Neb. Rev. Stat. § 83-328 (1971)	4, 5
N.Y. Mental Hyg. Law (McKinney 1978):	
§ 9.23(a)	7
§ 9.27	3, 6
§ 9.31(a)	6
§ 9.33(a)	7

Miscellaneous:

H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess. (1968)	7

In the Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-19

LAURENCE G. WATERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B1-B18) is reported at 23 F.3d 29. The opinion of the district court (Pet. App. A1-A14) is reported at 786 F. Supp. 1111.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 1994. The petition for a writ of certiorari was filed on July 1, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

On a conditional plea of guilty, petitioner was convicted in the United States District Court for the Northern District of New York of possessing a firearm

after previously being committed to a mental institution, in violation of 18 U.S.C. 922(g)(4). Petitioner was sentenced to two years' probation. The court of appeals affirmed. Pet. App. B1-B8.

1. On May 8, 1991, after the Bureau of Alcohol, Tobacco and Firearms (ATF) received two letters from petitioner concerning the location of explosives and firearms, an ATF agent interviewed petitioner in his home. Pet. App. B3. During that interview, petitioner discussed subversive activities, espionage, and his affiliation with "the Company," a colloquial appellation for the Central Intelligence Agency. 786 F. Supp. at 1113. Petitioner also produced six rifles, three shotguns, one machine gun, and a large quantity of ammunition for the ATF agents' inspection. *Ibid.*

Subsequent investigation revealed that petitioner had been involuntarily hospitalized at a psychiatric institution and had remained at the hospital for nearly ten months during 1979 and 1980. Pet. App. B4. Consequently, petitioner's guns were seized, and he was indicted by a federal grand jury on five counts of possessing firearms after previously being committed to a mental institution, in violation of 18 U.S.C. 922(g)(4).

2. Prior to trial, petitioner filed a motion to dismiss the indictment, alleging that he had not previously been "committed" within the meaning of Section 922(g)(4). Section 922(g)(4) does not contain a definition of "committed." In his motion, petitioner relied upon *United States* v. *Giardina*, 861 F.2d 1334 (5th Cir. 1988), and *United States* v. *Hansel*, 474 F.2d 1120 (8th Cir. 1973), which held that certain procedures used for involuntary hospitalization in Louisiana and Nebraska respectively did not constitute commitment to a mental institution under Section 922(g)(4). Petitioner argued that his

hospitalization was not a commitment because it had not resulted from a judicial order. Pet. C.A. Br. 4.

The district court rejected petitioner's claim. The court first assessed whether petitioner's hospitalization was a commitment by reference to New York law. It found that petitioner had been "committed" pursuant to N.Y. Mental Hyg. Law § 9.27 (McKinney 1978),[1] notwithstanding the fact that his commitment was not pursuant to a court order. Pet. App. A6-A9. The court next determined that prosecuting petitioner under Section 922(g)(4) was consistent with federal policy. The court noted that petitioner had been considered a danger to society when he was involuntarily confined, and that Section 922(g)(4) was enacted "to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society." Pet. App. A12 (quoting *Dickerson* v. *New Banner Institute, Inc.*, 460 U.S. 103, 112 (1983)). The court denied petitioner's subsequent motion for dismissal of the indictment, which alleged that his prosecution violated the Constitution's Ex Post Facto Clause.[2] On September 25, 1992, petitioner entered a conditional plea of guilty to one count of violating Section 922(g)(4), reserving the right to appeal the district court's interpretation of Section 922(g)(4) and its ruling on his ex post facto claim. Pet. App. B5-B6.

3. On appeal, petitioner argued that under *Giardina* and *Hansel*, the commitment contemplated by Section

---

[1] That Section provides, in pertinent part, "[t]he director of a hospital may receive and retain therein as a patient any person alleged to be mentally ill and in need of involuntary care and treatment upon the certificates of two examining physicians."

[2] Petitioner does not renew his ex post facto claim before this Court.

922(g)(4) requires either a court order or a determination of mental illness by a mental board or commission. Pet. C.A. Br. 8-16. Like the district court, the court of appeals observed that in *Giardina* and *Hansel*, commitment procedures established by state law had not been followed. Pet. App. B11-B13. In contrast, the court of appeals found that state authorities had adhered to all procedures for commitment of petitioner under New York law. Petitioner was therefore properly subject to prosecution under Section 922(g)(4). Pet. App. B13-B17.

ARGUMENT

Petitioner claims (Pet. 5, 13-14) that the decision of the court of appeals conflicts with the decisions of the Fifth and Eighth Circuits in *Giardina* and *Hansel*. He argues that a person is "committed" within the meaning of Section 922(g)(4) only if he is confined pursuant to a judicial order or the authorization of a mental board or commission. Neither *Hansel* nor *Giardina* supports that proposition, however, and review by this Court is not warranted.

In *United States* v. *Hansel*, the Eighth Circuit held that the defendant's hospitalization, pursuant to an order of the County Board of Mental Health (Board), was not a commitment under Section 922(g)(4). 474 F.2d 1120 (1973). In that case, the defendant was hospitalized pursuant to Neb. Rev. Stat. § 83-328 (1971), which established a two-step procedure for admission to a mental institution. The statute first provided for the temporary hospitalization of an individual for psychiatric observation if the Board made a determination that such person was mentally ill and in need of hospitalization. The second step established procedures to be employed if the superintendent of the hospital determined, during the period of observation, that the patient should be

committed. Under the statute, the patient could be committed only if the superintendent certified his determination to the Board. Section 83-328 stated, in relevant part, that "[c]ommitment by the county board of mental health will be completed only when certification from the superintendent of the state hospital concerned is properly filed with the referring county board of mental health." *Hansel*, 474 F.2d at 1122-1123 n.4.

The defendant in *Hansel* was examined by a physician and was found not to have a serious mental disorder. He was released two weeks after his admission. Since the superintendent of the hospital never filed a certification with the Board—a statutory prerequisite for "commitment" under state law—the court found that the commitment procedure was never completed. The defendant's hospitalization was therefore "a period of *observation*" and was not a commitment under the Gun Control Act. 474 F.2d at 1123. Thus, *Hansel* did not hold that a judicial order is a prerequisite for commitment under federal firearms law. Rather, it held that a defendant will be deemed "committed" under Section 922(g)(4) only if state officials employ the procedures required for "commitment" under the law of that State.

In *Giardina*, the Fifth Circuit held that the defendant's hospitalization pursuant to emergency certificates issued by a physician and a coroner did not constitute a commitment to a mental institution under Section 922(g)(4). 861 F.2d at 1334. The defendant was admitted to the hospital for a period of two weeks, the maximum period of time that Louisiana law permitted a patient to be detained under the two executed certificates. La. Rev. Stat. Ann. § 28:53(A)(1) (West 1989). Section 28:53(B) allowed a physician to execute an emergency certificate if he determined that the individual was dangerous to himself or others; the statute also

authorized a director of a treatment facility to keep the patient for 72 hours. If the director wished to detain the patient beyond this 72-hour period, a second examination by the coroner and the execution of a coroner's certificate was required. Detention beyond 15 days specifically required a judicial commitment. 861 F.2d at 1336. Giardina, however, was released at the end of the initial two-week period and was never hospitalized again. *Id.* at 1334. On that basis the court of appeals concluded that his admission pursuant to an emergency certificate did not constitute a "commitment" under Louisiana law. *Id.* at 1337. Like the Eighth Circuit's ruling in *Hansel*, that decision was predicated on the fact that the state law concerning commitment, which required that a judicial order be obtained, had not been followed.

Hansel and *Giardina* stand for the limited proposition that a defendant who does not undergo procedures for commitment that conform with state law may not be considered "committed" for purposes of prosecution under Section 922(g)(4). Pet. App. B7. Here, New York commitment procedures were properly executed.[3] The

---

[3] An involuntary admission under N.Y. Mental Hyg. Law § 9.27 (McKinney 1978) requires the certification of two physicians that an individual is mentally ill and in need of involuntary hospitalization. Judicial intervention is required only if (a) the patient requests a hearing to challenge the admission within the first 60 days, or (b) the director of the mental health facility determines that the admission must extend beyond the 60-day period and the patient does not waive the hearing by consenting to continued commitment. Under New York law, petitioner had a right to request a hearing concerning his involuntary hospitalization within 60 days of the date of his admission. *Id.* § 9.31(a). Petitioner made no such request. On the sixtieth day of his involuntary hospitalization, petitioner requested the director to convert his admission to voluntary status, and that request was granted. Involuntary hospitalization beyond 60 days requires a

decision of the court of appeals is therefore consistent with *Hansel* and *Giardina*.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

LEONARD E. BAILEY
Attorney

AUGUST 1994

---

court order in New York only if the patient fails to request or is denied conversion to voluntary status. *Id.* §§ 9.23(a), 9.33(a). Petitioner was released from the facility where he was confined on August 27, 1980, almost ten months after his admission.

[4] As petitioner points out (Pet. 6-7), the Conference Report accompanying the Gun Control Act of 1968 makes clear that Section 922(g)(4) "does not require that there be prior action by a court inasmuch as mental boards and commissions constitute the adjudicating or committing authority in some jurisdictions." H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess. 30 (1968). Contrary to petitioner's contention, however, the legislative history does not suggest that Section 922(g)(4) requires action either by a court or by a mental board or commission if a particular State permits commitment to be effected in a different manner. Rather, that history reflects Congress's awareness that commitment procedures vary from State to State and that application of Section 922(g)(4) will therefore depend on state law.

Petitioner also argues at length (Pet. 15-20) that the court of appeals' decision rests on a misunderstanding of New York law. That state law question does not warrant this Court's review.